

§ 1705.22

agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.22 Reply to the answer.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1705.25.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.23 Comments by other parties.

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1705.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

§ 1705.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative

12 CFR Ch. XVII (1–1–02 Edition)

officer's own initiative, or as requested by the Director of OFHEO under § 1705.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.26 Decision of the adjudicative officer.

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1705.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1705.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.